United States Department of Labor
Employees' Compensation Appeals Board

S.V., Appellant	)	
and	)	**Docket No. 20-1583**
	)	**Issued: August 23, 2021**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION, Phoenix, AZ, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 3, 2020 appellant filed a timely appeal from an April 14, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than nine percent permanent impairment of his right upper extremity for which he previously received a schedule award.

[1] 5. U S.C. § 8101 *et seq*.

FACTUAL HISTORY

On June 29, 2018 appellant, then a 36-year-old food service administrator, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his right shoulder and right upper arm when he tripped and fell over the forks of a forklift while in the performance of duty. He initially stopped work on June 29, 2018. On July 27, 2018 OWCP accepted appellant's claim for impingement syndrome of the right shoulder. It paid him wage-loss compensation on the supplemental rolls commencing September 21, 2018.

Appellant underwent OWCP-authorized right shoulder arthroscopy with debridement of the glenohumeral joint, posterior capsulorrhaphy, labral repair, distal clavicle resection, and subacromial decompression on October 1, 2018. He returned to limited-duty work on December 3, 2018 and full-duty work on July 16, 2019.

On September 1, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In support of his claim, appellant submitted progress notes, dated January 17 through June 13, 2019, from Dr. Gregory Evangelista, a Board-certified orthopedic surgeon, who provided physical examination findings and documented appellant's right shoulder treatment following his right shoulder arthroscopy.

In a July 16, 2019 report, Dr. Evangelista examined appellant's right shoulder and found 170 degrees of forward elevation, 45 degrees of external rotation, and internal rotation to T8. He indicated that appellant had full rotator cuff strength and no instability or apprehension. Dr. Evangelista noted that appellant's right shoulder was improving following his right shoulder arthroscopy. He diagnosed superior glenoid labrum lesion of the right shoulder and opined that appellant could return to full-duty work. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[2] Dr. Evangelista found that appellant had 13 percent permanent impairment of the right upper extremity.

In an October 24, 2019 report, Dr. Evangelista examined appellant's right shoulder and found 170 degrees of forward elevation, 45 degrees of external rotation, and internal rotation to T8. He again noted that appellant had full rotator cuff strength and no instability or apprehension. Utilizing the diagnosis-based impairment (DBI) method of the sixth edition of the A.M.A., *Guides*, Dr. Evangelista identified the class of diagnosis (CDX) as a class 1 impairment for the diagnosis of unidirectional shoulder instability under Table 15-5, page 404. He assigned a grade modifier for functional history (GMFH) of 2, a grade modifier for physical examination (GMPE) of 2, and a grade modifier for clinical studies (GMCS) of 2 in accordance with Table 15-6, page 406 (the Adjustment Grid: Summary). Dr. Evangelista applied the net adjustment formula, resulting in movement from the default class of C to E and corresponding to 13 percent permanent impairment of the right upper extremity. He opined that appellant had reached maximum medical improvement (MMI) on July 16, 2019.

[2] A.M.A., *Guides* (6th ed. 2009).

On February 13, 2020 OWCP referred appellant's case, along with a statement of accepted facts (SOAF), for a schedule award impairment rating with Dr. Alan J. Goodman, a Board-certified internist, serving as the district medical adviser (DMA). In an April 1, 2020 report, Dr. Goodman reviewed the SOAF and medical record. Utilizing the DBI method of the sixth edition of the A.M.A., *Guides*, he identified the CDX as a class 1 impairment for the diagnosis of unilateral shoulder instability, subluxing humeral head under Table 15-5, page 404. Dr. Goodman assigned a GMFH of 0, in accordance with Table 15-7, page 406, as appellant had no evidence of functional limitations as noted by Dr. Evangelista's July 16 and October 24, 2019 reports. He, therefore, disagreed with Dr. Evangelista's assignment of a GMFH of 2. Dr. Goodman reported a GMPE of 0, in accordance with Table 15-8, page 408, as appellant had no physical examination limitations. As such, he disagreed with Dr. Evangelista's assignment of a GMPE of 2. Dr. Goodman noted that, a GMCS should be excluded, in accordance with Table 15-9, page 410, as a magnetic resonance imaging (MRI) scan was used for placement of the diagnosis within a specific class in the DBI grid. He calculated that appellant had a net adjustment of -2, resulting in movement from the default class of C to A and corresponding to nine percent permanent impairment of the right upper extremity. Dr. Goodman indicated that a range of motion (ROM) impairment was excluded from his analysis as there was insufficient data to make an assessment. He noted that as there was no documentation that Dr. Evangelista performed three ROM measurements the ROM assessment was excluded. Dr. Goodman opined that appellant had reached MMI on July 16, 2019.

By decision dated April 14, 2020, OWCP granted appellant a schedule award for nine percent permanent impairment of the right upper extremity (right arm) based on the opinion of Dr. Goodman, the DMA, with which the weight of the medical evidence rested. The award ran for 28.08 weeks for the period July 23, 2019 through February 4, 2020.

LEGAL PRECEDENT

The schedule award provisions of FECA,[3] and its implementing federal regulations,[4] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[5] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[6] The Board has approved

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Id.* at § 10.404(a).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (7March 2017); *see also id*. at Chapter 3.700.2 and Exhibit 1 (January 2010).

the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[7]

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the shoulder, the relevant portion of the arm for the present case, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the CDX is determined from the Shoulder Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[8] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[9]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of permanent impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than nine percent permanent impairment of his right upper extremity for which he previously received a schedule award.

In support of his schedule award claim, appellant submitted an October 24, 2019 report from Dr. Evangelista who utilized the DBI method and identified the CDX as a class 1 impairment for the diagnosis of unidirectional shoulder instability under Table 15-5. Dr. Evangelista assigned a GMFH of 2, a GMPE of 2, and a GMCS of 2 in accordance with Table 15-6. He applied the net adjustment formula, resulting in movement from the default class of C to E and corresponding to 13 percent impairment of the right upper extremity. Dr. Evangelista opined that appellant had reached MMI on July 16, 2019.

OWCP properly routed appellant's case, including Dr. Evangelista's report, to its DMA, Dr. Goodman. In an April 1, 2020 report, the DMA utilized the DBI method and identified the CDX as a class 1 impairment for the diagnosis of unilateral shoulder instability, subluxing humeral head under Table 15-5. The DMA disagreed with Dr. Evangelista's impairment rating because of his assignment of the GMFH and GMPE. He assigned a GMFH and GMPE of 0, in accordance

[7] *See S.C.*, Docket No. 20-0769 (issued January 12, 2021); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[8] A.M.A., *Guides* 405-12. Table 15-5 also provides that, if motion loss is present for a claimant with certain diagnosed conditions, permanent impairment may alternatively be assessed using section 15.7 (ROM impairment). Such a ROM rating stands alone and is not combined with a DBI rating. *Id.* at 401-05, 475-78.

[9] *Id.* at 23-28.

[10] *See supra* note 6 at Chapter 2.808.6(f) (March 2017).

with Table 15-7 and Table 15-8, as appellant had no functional or physical examination limitations as evidenced by Dr. Evangelista's July 16 and October 24, 2019 reports and the medical record. The DMA noted that a GMCS should be excluded, in accordance with Table 15-9, as an MRI scan was used for placement of the diagnosis within a specific class in the DBI grid. He calculated that appellant had a net adjustment of -2, resulting in movement from the default class of C to A and corresponding to nine percent impairment of the right upper extremity. The DMA noted that the ROM rating method was not applicable as there was insufficient data to make an assessment. He opined that appellant had reached MMI on July 16, 2019.

The Board finds that the DMA's opinion was based on a proper factual and medical history and on the appropriate tables and grading schemes of the A.M.A., *Guides*. The DMA accurately applied the standards of the A.M.A., *Guides* to the physical examination findings of Dr. Evangelista. He provided rationale for his impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[11] Consequently, the Board finds that OWCP properly accorded the weight of the medical evidence to the DMA's April 1, 2020 report and found nine percent permanent impairment of appellant's right upper extremity.[12]

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than nine percent permanent impairment of his right upper extremity for which he previously received a schedule award.

[11] *Supra* note 9.

[12] *See V.G.*, Docket No. 19-1728 (issued September 2, 2020).

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board